

CHICAGO, ILLINOIS 60602
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ATARI, INC.,)
a Delaware corporation, and)
MIDWAY MFG. CO.,)
an Illinois Corporation,)
Plaintiffs,)
vs.) Civil Action No.
NORTH AMERICAN PHILIPS)
CONSUMER ELECTRONICS CORP.,) 81-C-6434
a Tennessee corporation,)
PARK TELEVISION d/b/a)
PARK MAGNAVOX HOME ENTERTAINMENT)
CENTER,)
an Illinois partnership, and)
ED AVERETT,)
an individual,)
Defendants.)
JURY DEMANDED
82 JUN 28 p 4:15
FILED

DEFENDANT NORTH AMERICAN PHILIPS CONSUMER
ELECTRONICS CORP.'S ANSWERS AND OBJECTIONS
TO PLAINTIFF ATARI, INC.'S FIRST SET
OF INTERROGATORIES

Defendant North American Philips Consumer Electronics
Corp. makes the following answers by its undersigned officer,
and the following objections by its undersigned attorneys,

to the above-identified plaintiff's first set of interrogatories, the following responses being based upon this defendant's best present information and belief after diligent inquiry and investigation of the sources believed to have or contain the most accurate and complete information on the respective subjects of inquiry, but being subject to correction and/or amplification in the event of later discovery of more accurate or more complete information.

INTERROGATORY NO. 1

As to North American:

(a) identify North American's parent corporation and all predecessor corporations, each subsidiary corporation, affiliated or related company;

(b) for each of the entities identified in sub-part (a) state all jurisdictions in which it is or has ever been incorporated, the date of incorporation in each jurisdiction identified, the names of all states in which each entity is registered or authorized to do business, the date of each such registration or authorization, and identify each entity's registered agent in each state;

(c) state for each entity identified in (a) its principal place of business and identify all of each entity's offices and plants and facilities and state each entity's fiscal year;

(d) for each entity identified in sub-part (a) identify all officers, directors and management employees from January 1, 1977 to date and for each state: (1) the title of each office or position held by such person; (2) the period during which that person served in each office and position identified; and (3) that person's responsibilities, duties and functions in each such office or position;

(e) for each entity identified in sub-part (a), identify all stockholders holding 10% or more of the stock or equity in such company and state their approximate respective shares from January 1, 1977 to date;

(f) state with particularity for each entity identified in sub-part (a), the type of business conducted by that entity, including the annual dollar volume of sales and earnings broken down by year from January 1977 to date;

(g) identify by names of all parties, court location, file number, and date of filing, each lawsuit in which any of the entities identified in sub-part (a) was a plaintiff or a defendant involving in any way, copyright, trademark or unfair competition issues;

(h) identify each person preparing or assisting in the preparation of North American's answer to these interrogatories.

Responses and Objections to Interrogatory No. 1

(a) N.A.P. Consumer Electronics Corp. (hereinafter "North American") is a wholly owned subsidiary of North American Philips Consumer Electronics Corp. and does all of the Odyssey² business. North American Philips Consumer Electronics Corp. is a subsidiary of North American Philips Development Corporation, which, in turn, is a subsidiary of North American Philips Corporation.

Objection is made to identifying other branches of North American Philips Corporation besides N.A.P. Consumer Electronics Corp. on the grounds of relevancy, since no other portion of that corporation has had anything to do with the creation, manufacture, sale, or distribution of the game cartridge, K.C. Munchkin. The information sought cannot lead to any admissible evidence.

(b) Objection. North American does not contest either jurisdiction or venue of the present action in the Northern District of Illinois, Eastern Division. There is no relevancy or benefit to plaintiffs in the information requested, and such information cannot lead to any admissible evidence.

(c) North American has a place of business in Knoxville, Tennessee, from which all matters pertaining to the game K.C. Munchkin are managed. The facility which manufactures the K.C. Munchkin game cartridge is in Jefferson City, Tennessee.

Objection is made to the remaining scope of this interrogatory on the ground that the further information requested is irrelevant to any issue in this action and cannot lead to any admissible evidence.

(d) See response to Interrogatory No. 3, wherein the most knowledgeable management personnel of North American, so far as can be presently ascertained, are listed as of November 13, 1980 and thereafter.

Objection is made to the remaining scope of this interrogatory on the ground that the further information requested is irrelevant to any issue in this action and cannot lead to any admissible evidence.

(e) See response to Interrogatory No. 1(a) above.

(f) North American makes and sells T.V. receivers, video discs, video game cartridges including consoles for

playing the cartridges, and audio equipment including related consumer electronic equipment. It also sells, but does not make, video cassettes.

Objection is made to providing sales information on products other than the K.C. Munchkin cartridge and consoles for playing the Odyssey² type of cartridges of which the K.C. Munchkin cartridge is one. Such information as to other products is of no relevance to this action and is confidential business information which should not be provided to any of North American's competitors.

North American has collected and will provide to plaintiffs the sales of the Odyssey² consoles and K.C. Munchkin cartridges in number of units sold by North American during 1981 and 1982, subject to a protective order restricting the use of the figures to the purposes of this action only and not for general dissemination in the plaintiffs' organizations or for public disclosure.

Objection is made to providing dollar amounts for any prior time and for any other products or business activities, since such amounts have no relevancy to this action.

(g) Objection is made on the ground that there is no relevancy to any of the information sought, and it cannot lead to any admissible evidence.

(h) Investigation of sources expected to contain information on the subjects of inquiry, if any existed, was done by trial counsel and members of North American's legal department. Assistance was provided by Ralph Staup and Ed Averett.

INTERROGATORY NO. 2

Identify the "corporation related to North American" referred to in paragraph 2 of the defendants' Answer, which:

- (a) manufactures K.C. Munchkin;
- (b) distributes K.C. Munchkin; and
- (c) sells K.C. Munchkin.

Response to Interrogatory No. 2

Just N.A.P. Consumer Electronics Corp.

INTERROGATORY NO. 3

For each of the entities identified in the answer to Interrogatory 1(a), identify all officers, directors, employees, agents, consultants or independent contractors who were in any way involved in the creation, development, market analysis, marketing, advertising, pricing, purchasing of materials, manufacturing, introduction, distribution and sales of K.C. Munchkin. For each of these persons, state with particularity that persons's responsibilities, reporting functions and dates of involvement (beginning and end) on the K.C. Munchkin project.

Responses and Objections to Interrogatory No. 3

The most knowledgeable management personnel of North American, so far as can presently be ascertained, in the areas inquired about are:

Creation: Ralph Staup
Development: Ralph Staup
Market analysis: Ralph Staup
Marketing: Ralph Staup
Pricing: Ralph Staup
Purchasing of materials: Harold McDowell
Manufacturing: Eugene Simmerly
Introduction: Ralph Staup
Distribution and Sales: Ralph Staup

The above are employees of North American. Ed Averett is not an employee of North American, but was involved in the creation of the K.C. Munchkin video game as he testified before the Court.

Objection is made on the grounds of breadth of the interrogatory as well as to the amount of burdensome detail sought.

INTERROGATORY NO. 4

State the following:

(a) the date(s) when each of the persons identified in the Interrogatory 3 first saw, observed, or played PAC-MAN. Indicate which if any of such persons have never seen, observed, or played PAC-MAN;

(b) the date and location when Mike Staup first saw, observed, or played PAC-MAN;

(c) the date and location when Ed Averett ("Averett") first saw, observed, or played PAC-MAN;

(d) the specific instructions and the date of such instructions given Averett by any of the persons identified in the answer to Interrogatory 3 concerning the game which ultimately was named K.C. Munchkin, subsequent to the date identified in sub-part (c) above. Identify the person giving such instructions to Averett; Identify the

(e) the date when Averett began working on the game identified in the instructions specified in sub-part (d) above;

(f) identify the person who was responsible for attempting to obtain a license to PAC-MAN from MIDWAY for any of the entities identified in the answer to Interrogatory 1(a);

(g) the date(s), location(s), and identify the participants in any communications in which obtaining a license to PAC-MAN from MIDWAY was discussed in which any of the entities identified in the answer to Interrogatory 1(a) were involved;

(h) the date when the request for permission to license PAC-MAN was denied by MIDWAY. Identify the participants in such communication;

(i) the date when Averett was informed that permission to license PAC-MAN was denied. Identify the participants in such communication;

(j) whether Averett had delivered any version of K.C. Munchkin to any of the entities identified in the answer to Interrogatory 1(a) prior to the date identified in sub-part (h) above. If so, state the date of such delivery;

(k) the date when Averett first delivered a version of K.C. Munchkin to one of the entities identified in the answer to Interrogatory 1(a);

(l) the date(s), and identify the participants in and substance of each communication(s) with Averett subsequent to the date specified in sub-part (k) above;

(m) the date(s) of each delivery of a version of K.C. Munchkin by Averett to any of the entities identified in the answer to Interrogatory 1(a);

(n) the date when K.C. Munchkin was named "K.C. Munchkin." Identify the person responsible for assigning, determining or selecting the name "K.C. Munchkin."

(o) the date when K.C. Munchkin was officially introduced by one of the entities identified in the answer to Interrogatory 1(a);

(p) the date when television advertising commitments were made for K.C. Munchkin. Identify the advertising agency(s) or firm(s) with whom these commitments were made;

(q) the date when producing, writing, designing, taping, or filming television advertising began for K.C. Munchkin;

(r) the date when print advertising commitments were made for K.C. Munchkin. Identify the advertising agency(s) or firm(s) with whom these commitments were made.

Responses and Objections to Interrogatory No. 4

(a) The first time that the video game PAC-MAN was seen by any of the persons listed in the response to Interrogatory No. 3 above was in February 1981, as Mr. Averett and Mr. Staup testified before the Court.

(b) See response to (a) above.

(c) See response to (a) above.

(d) The discussions between Mr. Averett and Mr. Staup, the approximate dates thereof, and their contents were covered in detail by these persons in their testimony before the Court. None of the persons listed gave Mr. Averett any specific instructions.

(e) The information sought was covered in detail by Mr. Averett and Mr. Staup in their testimony before the Court.

(f) William J. Streeter, Esq., Patent Counsel for North American.

(g) William J. Streeter, Esq., and Mr. Henry Ross of Midway. Also, Mr. Staup and Mr. Averett. Communications were between March and June 1981.

(h) Date unknown, but approximately June 1981.

Mr. Streeter and Mr. Henry Ross of Midway participated.

(i) Date unknown, but approximately June 1981.

Mr. Staup and Mr. Averett.

(j) No.

(k) Date unknown, but approximately August 1981.

(l) Objection. This interrogatory is too broad to develop any meaningful information. As much of the relevant information as is presently known was covered in the testimony of Mr. Staup and Mr. Averett in their testimony before the Court.

(m) Unknown.

(n) About August, 1981; Ralph Staup.

(o) November, 1981.

(p) October 15, 1981; Campbell-Ewald.

(q) November 19, 1981.

(r) September 24, 1981; Campbell-Ewald.

INTERROGATORY NO. 5

Identify all suppliers of materials used in the manufacturing of K.C. Munchkin. For each material supplied, identify the quantity ordered each time an order was placed, the quantity delivered, the unit price of the material, the quantity used in the manufacturing process and the quantity currently held in inventory. Provide the dates of all orders, deliveries, prices and inventory figures.

Response and Objection to Interrogatory No. 5

The components of a K.C. Munchkin video game cartridge and package (prior to the date of the current injunction) were: a memory chip, a label, a casing and related parts, a carton and an instruction manual, all of which except the carton are already in evidence as part of the preliminary injunction hearing.

Objection is made on the grounds that the interrogatory is too broad, the information sought is not calculated to lead to any admissible evidence, and the information sought is confidential business information which should not be disclosed to a competitor, i.e., the names of suppliers, quantities ordered each time an order was placed, quantities delivered with each delivery, unit prices of each material, quantities used in the manufacturing process and quantities currently held in inventory, have no conceivable bearing upon the issues in this case.

INTERROGATORY NO. 6

State the following:

(a) the number of K.C. Munchkin cartridges sold and the number of K.C. Munchkin cartridges shipped by each of the entities identified in the answer of Interrogatory 1(a) as to each of the following dates, along the corresponding sales dollar figures for the cartridges sold as of each date:

- (i) November 18, 1981;
- (ii) December 25, 1981;

- (iii) January 1, 1982; and
- (iv) the date of answering this Interrogatory;

(b) the average price charged by each of the entities identified in the answer to Interrogatory 1(a) for each K.C. Munchkin cartridge sold;

(c) the average cost on each K.C. Munchkin cartridge sold by each of the entities identified in the answer to Interrogatory 1(a);

(d) the average profit margin (before taxes) in percentage form on each K.C. Munchkin cartridge sold by each of the entities identified in the answer to Interrogatory 1(a);

(e) the number of K.C. Munchkin cartridges held in inventory by each of the entities identified in the answer to Interrogatory 1(a) as of the date of answering this Interrogatory;

(f) by month the projected number of K.C. Munchkin cartridges to be sold by each of the entities identified in the answer to Interrogatory 1(a) during calendar 1982;

(g) by month the number of Odyssey² consoles sold by each of the entities identified in the answer to Interrogatory 1(a) prior to the date K.C. Munchkin was officially introduced (identified in Interrogatory 6(o) above).

(h) by month the number of Odyssey 2 consoles sold by each of the entities identified in the answer to Interrogatory 1(a) after the official introduction of K.C. Munchkin (identified in Interrogatory 6(o) above).

Responses and Objections to Interrogatory No. 6

(a) See response to Interrogatory No. 1(f) above as to sales to the date of the injunction.

Objection is made to any breakdown by dates as requested in parts i-iii of this interrogatory; such a breakdown is not calculated to lead to any admissible evidence

and is burdensome. A separate figure of quantities shipped, as opposed to sales, and any response to Part iv, are moot in view of North American's adherence to the injunction.

(b) North American's average price for the cartridges sold will be provided under the protective order.

(c) North American's average cost for each of the cartridges sold will be provided under the protective order.

(d) North American's average profit on each of the cartridges will be provided under the protective order.

(e) Objection is made to providing the number of cartridges in inventory; such information is not calculated to lead to any admissible evidence in this action in view of North American's adherence to the injunction.

(f) None.

(g) No answer or response possible.

(h) No answer or response possible.

INTERROGATORY NO. 7

State the total amount invested in the K.C. Munchkin project, broken down monthly in the following categories for each entity identified in the answer to Interrogatory 1(a):

(a) pre-introduction research and development (including advances to the Averetts);

(b) market analysis and marketing;

(c) advertising, broken down by print and television;

- (d) post-introduction;
- (e) total amount budgeted for the entire project; and
- (f) projected investment for calendar 1982.

Responses and Objections to Interrogatory No. 7

(a) No advances were made to the Averetts and no costs were allocated for research and development of "the K.C. Munchkin project" prior to introduction of the cartridge. Objection is made to further response to this interrogatory because it is not calculated to lead to any admissible evidence, especially since it does not take into account North American's experience and general expertise or overhead in manufacturing and selling a variety of video game cartridges for several years prior to any conception of the K.C. Munchkin game cartridge.

(b) No formal market analysis was specifically made as to money to be invested in the K.C. Munchkin game prior to introduction of the cartridge. Prior and subsequent to such introduction, \$ _____ (figure to be supplied under the protective order) was allocated to marketing the cartridge as part of North American's line of home video game cartridges. Objection is made to further response to this interrogatory because it is not calculated to lead to any admissible evidence, especially since it does not take into account North American's experience and general expertise or overhead

in manufacturing and selling a variety of video game cartridges for several years prior to any conception of the K.C. Munchkin game cartridge.

(c) \$ _____ (figure to be supplied under the protective order) has been allocated to the advertising of the K.C. Munchkin cartridge and such allocation has been spent by North American, but objection is made to further response to this interrogatory because it is not calculated to lead to any admissible evidence.

(d) Objection is made to this interrogatory because it is indefinite as to what information it seeks.

(e) Objection is made to this interrogatory because it is not calculated to lead to any admissible evidence; the "amount budgeted" is an anticipatory and speculative term.

(f) Objection is made to this interrogatory because it is not calculated to lead to any admissible evidence. The injunction was entered in March 1982; the suit has been pending since prior to 1982; and any projected investment would be entirely speculative.

INTERROGATORY NO. 8

Identify all Division General Managers for each of the entities identified in the answer to Interrogatory 1(a). For each, specify that person's responsibilities, territory and reporting functions.

Response to Interrogatory No. 8

DIVISION 1 - Northeastern

Reitter, Frank
N.A.P. Consumer Electronics Corp.
2 Newton Executive Park 202
Newton, MA 02162
617/964-3960

DIVISION 2 - New York

Calabrese, Jerry
N.A.P. Consumer Electronics Corp.
370 North Street
Teterboro, NJ 07608
201/288-0995

DIVISION 3 - Mid-Atlantic

Sherwood, Dan
N.A.P. Consumer Electronics Corp.
2201 Rt. 38 Ste. 750
Cherry Hill, NJ 08002
609/667-7047

DIVISION 4 - Great Lakes

Oliver, Ray
N.A.P. Consumer Electronics Corp.
24090 Detroit Road
Westlake, OH 44145
216/835-4450

DIVISION 5 - Southeastern

Smith, Carl N.
N.A.P. Consumer Electronics Corp.
1898 Leland Drive
Marietta, GA 30067
404/952-0064

DIVISION 6 - Great Plains

Giese, Ronald E.
N.A.P. Consumer Electronics Corp.
7520 Frontage Road
Skokie, IL 60076
312/282-8088

DIVISION 7 - Southwestern

Smith, Whitson R.
N.A.P. Consumer Electronics Corp.
1939 Hereford Drive
Irving, TX 75062
214/659-0515

DIVISION 8 - Pacific

Brittle, William R.
N.A.P. Consumer Electronics Corp.
1200 Bruyhill Drive 105
San Bruno, CA 94066
415/871-5544

DIVISION 9 - Los Angeles

Stephans, George
N.A.P. Consumer Electronics Corp.
P.O. Box 5127
Torrance, CA 90501
213/320-8990

INTERROGATORY NO. 9

Identify

(a) the person responsible for contact with
distributors regarding in any way PAC-MAN, ATARI, MIDWAY, or
K.C. Munchkin;

(b) the person responsible for contact with
retailers regarding in any way PAC-MAN, ATARI, MIDWAY, or
K.C. MUNCHKIN;

(c) the person responsible for contact with
consumers regarding in any way PAC-MAN, ATARI, MIDWAY, or
K.C. Munchkin.

Responses and Objections to Interrogatory No. 9

Objection is made to the indefiniteness and breadth of this interrogatory in inquiring about some person who is identified in part (a) of the interrogatory as being "responsible for contact with distributors regarding in any way PAC-MAN, ATARI, MIDWAY or K.C. MUNCHKIN," and, in parts (b) and (c) of the interrogatory, such "contact" with "retailers" and "consumers," respectively. Assuming that the interrogatory means to pinpoint someone in North American's organization, there is still no way of knowing what type of subject matter is requested as to "PAC-MAN" or "K.C. MUNCHKIN," and certainly, the general reference to "ATARI" AND "MIDWAY" is so broad as to include a wide field of subject matter having no bearing whatsoever on this case.

INTERROGATORY NO. 10

State specifically any contract, royalty or other compensation arrangement North American or any entity identified in the answer to Interrogatory 1(a) has or had with: (a) Averett; (b) Averett's wife. State which entity(s) have each contract(s) or compensation arrangement(s) with Averett and Averett's wife. State the amount of money payed or payable to Averett and his wife as of the date of answering this Interrogatory attributable to K.C. Munchkin.

Response to Interrogatory No. 10

The N.A.P. Consumer Electronics Corp. contract with Mr. Averett will be produced to plaintiffs subject to the terms of the protective order. There is no contract with Mrs. Averett. The amount of money paid to Mr. Averett to date attributable to the K.C. Munchkin video game will be provided to plaintiffs under the protective order.

INTERROGATORY NO. 11

State the name assigned by Averett to the first version provided to the entities identified in the answer to Interrogatory 1(a) of the video game which ultimately was introduced as K.C. Munchkin.

Response to Interrogatory No. 11

G22 Magnavox.

INTERROGATORY NO. 12

State the name assigned or used to describe at any time the K.C. Munchkin project by any of the entities identified in the answer to Interrogatory 1(a) other than the name K.C. Munchkin. Identify the person responsible for assigning such name(s) and the date(s) of such assignment or use.

Response to Interrogatory No. 12

No formal name was assigned to the project, but the designation AC 9435 was assigned to the cartridge. At times, the informal name "Munch Man" was used internally.

INTERROGATORY NO. 13

State with specificity the document retention policy of each entity identified in the answer to Interrogatory 1(a).

Response and Objection to Interrogatory No. 13

The term of the document retention policy of N.A.P. Consumer Electronics Corp. varies as to the type of document involved. Routine documents are usually destroyed after the period of active or current usage.

Objection is made to providing information on this subject as to any other entities referred to in the response to interrogatory No. 1(a) on the grounds that such information is irrelevant to any of the issues in this action and is not calculated to lead to any admissible evidence.

INTERROGATORY NO. 14

Identify for each request the custodian of the documents requested in Plaintiff ATARI INC.'s First Request for the Production of Documents and Tangible Things.

Response to Interrogatory No. 14

The custodians of documents specified in the document request have not yet been identified, but their names will be provided as soon as ascertained.

INTERROGATORY NO. 15

Identify all persons and companies with whom any of the entities identified in the answer to Interrogatory 1(a) have had communications regarding PAC-MAN, Jawbreaker, Gobbler and any video game which is the subject of litigation involving PAC-MAN in any way. State the date(s) and participant(s) and location(s) of each communication between such persons and companies and any of the entities identified in the answer to Interrogatory 1(a).

Response and Objection to Interrogatory No. 15

Aside from communications with plaintiffs' representatives, which are included in the scope of this interrogatory and which plaintiffs have full information on already, the only communications with others, to the extent presently recalled, have been by North American's attorneys investigating issues in this action during the time the action has been pending, and at the request of North American's trial counsel. Such investigations are regarded as attorney work product, and objection is made to disclosing any of the information concerning or derived from them on that ground. There may have been casual comments by innumerable and not yet identified employees of North American to others at trade shows and the like, but present investigation suggests the fact of such comments only as a possibility, and their content is unknown.

NORTH AMERICAN PHILIPS CONSUMER
ELECTRONICS CORP.

By Thomas M. Saper

On this 25th day of June, 1982, before me personally appeared THOMAS M. HAFNER to me known, who being by me duly sworn did depose and say that he is Assistant Secretary of NORTH AMERICAN PHILIPS CONSUMER ELECTRONICS CORP. and that the foregoing answers in the above-entitled action are true to the best of his knowledge and belief.

Quil B. Iddings
Notary Public

My Commission Expires June 22, 1985

OBJECTIONS TO INTERROGATORIES

Objections set forth in the Reponses and Objections to the foregoing interrogatories Nos. 1 through 15 are made pursuant to Rule 33 of the Federal Rules of Civil Procedure by defendant North American Philips Consumer Electronics Corp.'s attorneys.

Gregory B. Beggs
Gregory B. Beggs
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Chicago, Illinois 60602
(312) 346-1200

One of the Attorneys for
Defendant North American
Philips Consumer Electronics
Corp.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing DEFENDANT NORTH AMERICAN PHILIPS CONSUMER ELECTRONICS CORP.'S ANSWERS AND OBJECTIONS TO PLAINTIFF ATARI, INC.'S FIRST SET OF INTERROGATORIES was served upon the attorneys for each of the plaintiffs by mailing copies first class postage prepaid to them at the following addresses:

Daniel W. Vittum, Jr.
Robert G. Krupka
David E. Springer
Martin L. Lagod

KIRKLAND & ELLIS
200 East Randolph Drive
Chicago, Illinois 60601

and

Eric C. Cohen
A. Sidney Katz
Donald L. Welsh

FITCH, EVEN, TABIN,
FLANNERY & WELSH
Suite 900
135 South LaSalle Street
Chicago, Illinois 60603

all this 28th day of June, 1982.

